

1 JAMES V. FITZGERALD, III (State Bar No. 55632)  
2 NOAH G. BLECHMAN (State Bar No. 197167)  
3 PETRA BRUGGESSER (State Bar No. 241173)  
4 McNAMARA, NEY, BEATTY, SLATTERY,  
5 BORGES & AMBACHER LLP  
6 1211 Newell Avenue  
7 Walnut Creek, CA 94596  
8 Telephone: (925) 939-5330  
9 Facsimile: (925) 939-0203

John C. Burton (State Bar No.  
86029)  
LAW OFFICES OF JOHN  
BURTON  
Law 65 North Raymond Avenue,  
Suite 300  
Pasadena, CA 91103  
Telephone: (626) 449-8300  
Facsimile (626) 449-4417

6 Attorneys for Defendants (both cases)

Attorneys for Plaintiff  
ANDREW WASHINGTON, JR.,  
a minor

7 ANDREW C. SCHWARTZ (State Bar No. 064578)  
8 CASPER, MEADOWS, SCHWARTZ & COOK  
9 A Professional Corporation  
California Plaza  
10 2121 North California Blvd., Suite 1020  
Walnut Creek, CA 94596  
Telephone: (925) 947-1147  
Facsimile: (925) 947-1131

Mark E. Merin (State Bar No.  
043849)  
LAW OFFICES OF MARK E.  
MERIN  
1010 F Street, Suite 300  
Sacramento, CA 95814  
Telephone: (916) 443-6911  
Facsimile: (916) 447-8336  
E-Mail: [mark@markmerin.com](mailto:mark@markmerin.com)

12 Attorneys for Plaintiff  
13 ANDREW WASHINGTON, JR., a minor

Attorneys for Plaintiff  
ANDREW WASHINGTON, JR.,  
a minor

14 JOHN L. BURRIS, Esq. (State Bar # 69888)  
15 BENJAMIN NISENBAUM, Esq. (State Bar #222173)  
16 LAW OFFICES OF JOHN L. BURRIS  
7677 Oakport Street, Suite 1120  
Oakland, CA 94621  
Telephone: (510) 839-5200  
Facsimile: (510) 839-3882

17 Attorneys for Plaintiff  
18 LORI BAUER

19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA

21 ANDREW WASHINGTON, JR., A  
22 MINOR, INDIVIDUALLY IN HIS  
23 PERSONAL CAPACITY AND AS  
24 SUCCESSOR IN INTEREST OF  
25 DECEDEDENT ANDREW WASHINGTON,  
SR., BY AND THROUGH HIS  
GUARDIAN AD LITEM, ALEJANDRA  
RAYA,

Case No. 05-CV-00881 JAM-DAD

**STIPULATION AND  
ORDER TO CONSOLIDATE  
RELATED CASES – FRCP 42**

26 Plaintiff,

27 vs.

1 TASER INTERNATIONAL, INC.; CITY  
2 OF VALLEJO; et al., ,

3 Defendants.

4 LORI BAUER, INDIVIDUALLY, AND  
5 AS PERSONAL REPRESENTATIVE OF  
6 THE ESTATE OF ANDREW  
7 WASHINGTON,

8 Plaintiff,

9 vs.

10 CITY OF VALLEJO, A MUNICIPAL  
11 CORPORATION, et al.,

12 Defendants.

Case No. 06-CV-00549 JAM-DAD

13 IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this action,  
14 through their respective counsel of record, as follows:

15 WHEREAS this Court issued a Related Case Order for the concurrently pending civil  
16 actions (Washington) 05-CV-00881 JAM-DAD and (Bauer) 06-CV-00549 JAM-DAD. The  
17 Court reasoned that “the assignment of the matters to the same judge and magistrate judge is  
18 likely to affect a substantial savings of judicial effort and is also likely to be convenient for the  
19 parties.” (See Related Case Order, signed by Hon. District Court Judge John A. Mendez on  
March 21, 2013, Document 87 (Washington) and Document 44 (Bauer)).

20 WHEREAS the parties agree and hereby stipulate to consolidate both actions under FRCP  
21 42(a) for the purposes of remaining discovery, pretrial and trial, in other words, for all purposes.  
22 Good cause for a consolidation of both actions exists because both cases involve the same parties,  
23 the same or similar claims, the same death related event, the same witnesses, same or similar  
24 experts, the same or similar evidence and the same or similar questions of fact and law, as set  
25 forth below. Thus, a consolidation of both cases for remaining discovery, pretrial and trial, in  
26 other words, for all purposes, will likely effect a savings of judicial effort and other economics  
27 and will avoid unjust and different outcomes related to the same alleged wrongful death incident.

28 WHEREAS both cases involve the same event, the death of Andrew Washington on  
STIPULATION AND ORDER TO CONSOLIDATE  
RELATED CASES - 05-CV-00881 JAM-DAD AND  
06-CV-00549 JAM-DAD

1 September 16, 2004. The City of Vallejo, Jeremie Patzer, and Robert Nichelini are named  
2 Defendants in both cases. In addition, City of Vallejo's Police Officers Tom Liddicoet and David  
3 Jackson are named in the Bauer action. The plaintiff in the Washington action is the minor son of  
4 the decedent, whereas the plaintiff in the Bauer case is the decedent's mother. The claims  
5 asserted in both cases are similar as they all arise out of the same incident, namely the alleged  
6 wrongful death of the decedent arising out of his contact with the City of Vallejo police officers  
7 on September 16, 2004. All in all, the trial of these two cases will likely be almost identical,  
8 involving the same or similar parties, witnesses, evidence, experts and overlapping claims. As  
9 such, these two cases should be consolidated for all purposes.

10 WHEREAS consolidating both cases is also warranted to avoid inconsistent orders,  
11 judgments and/or trial outcomes. As both cases involve the same questions of fact and law, they  
12 should yield the same result. Plaintiffs in both cases claim damages against the Vallejo  
13 Defendants for the wrongful death of Andrew Washington on September 16, 2004. The factual  
14 issues in both cases will be identical. The legal questions in both cases will be practically  
15 identical, with some minor differences due to the fact that one Plaintiff is the son of the Decedent  
16 and one is the mother. The overlap in factual and legal issues will be substantial, if not identical.  
17 Trying both cases in separate trials and/or deciding both cases in relation to separately filed  
18 motions for summary judgment would not only entail substantial duplication of labor, but more  
19 importantly, there would be a substantial risk of inconsistent orders, judgments and/or trial  
20 outcomes. Furthermore, while each plaintiff maintains his or her own personal and separate  
21 cause of action, a wrongful death action is generally considered joint, single and indivisible. All  
22 heirs should join in a single action (the so called "**one action rule**"). San Diego Gas & Elec. Co.  
23 v. Superior Court (2007) 146 Cal.App.4th 1545, 1551 (emphasis added).

24  
25  
26  
27  
28

/ / /

1 THEREFORE the parties agree and hereby stipulate to consolidate both cases under  
2 FRCP 42(a) for remaining discovery, pretrial and trial purposes, in other words, for all purposes.

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD**

4 DATED: March 28, 2013

CASPER, MEADOWS, SCHWARTZ & COOK

5 By: /s/

6 ANDREW C. SCHWARTZ  
7 JOHN C. BURTON  
8 MARK E. MERIN  
Attorneys for Plaintiff  
ANDREW WASHINGTON, JR.

9 Dated: March 28, 2013

10 LAW OFFICES OF JOHN L. BURRIS

11 By: /s/

12 John L. Burris, Esq.  
Benjamin Nisenbaum, Esq.  
13 Attorneys for Plaintiff Lori Bauer

Dated: March 27, 2013

14 McNAMARA, NEY, BEATTY, SLATTERY,  
BORGES & AMBACHER LLP

15 By: /s/ Noah G. Blechman

16 James V. Fitzgerald, III  
Noah G. Blechman  
Petra Bruggisser  
17 Attorneys for Defendants (both cases)

18 **ORDER**

19 Good cause having been shown by the parties, the Court hereby orders that the civil  
20 actions (Washington) 05-CV-00881 JAM-DAD and (Bauer) 06-CV-00549 JAM-DAD are  
21 hereby ordered CONSOLIDATED for all purposes per FRCP 42 (a). The earlier filed case,  
22 (Washington) 05-CV-00881 JAM-DAD, shall be the leading case. The caption on documents  
23 filed in the consolidated cases shall be shown as 2:05-CV-00881 JAM-DAD.

24 **IT IS SO ORDERED.**

25  
26 Dated: April 2, 2013

27 /s/ John A. Mendez

28 Honorable John A. Mendez  
United States District Court Judge